

Attachment 7 - Lease stipulations and lease notices

The following stipulations would apply to all leases:

1. ENDANGERED SPECIES ACT SECTION 7 CONSULTATION STIPULATION

The lease area may now or hereafter contain slickspot peppergrass (*Lepidium papilliferum*), Long-billed curlew, or other plants, animals, or their habitats determined to be threatened, endangered, or other special status species. BLM may recommend modifications to exploration and development proposals to further its conservation and management objective to avoid BLM-approved activity that will contribute to a need to list such a species or their habitat. BLM may require modifications to or disapprove proposed activity that is likely to result in jeopardy to the continued existence of a proposed or listed threatened or endangered species or result in the destruction or adverse modification of a designated or proposed critical habitat. BLM will not approve any ground-disturbing activity that may affect any such species or critical habitat until it completes its obligations under applicable requirements of the Endangered Species Act as amended, 16 USC 1531 et seq., including completion of any required procedure for conference or consultation.

2. BALD AND GOLDEN EAGLE PROTECTION ACT (EAGLE ACT) COMPLIANCE STIPULATION

Bald and/or golden eagles may now or hereafter be found to utilize the project area. The BLM will not issue a notice to proceed for any project that is likely to result in take of bald eagles and/or golden eagles until the applicant completes its obligation under applicable requirements of the Eagle Act, including completion of any required procedure for coordination with the U.S. Fish and Wildlife Service (Service) or any required permit. The BLM hereby notifies the applicant that compliance with the Eagle Act is a dynamic and adaptable process which may require the applicant to conduct further analysis and mitigation following assessment of operational impacts. Any additional analysis or mitigation required to comply with the Eagle Act will be developed with the Service and coordinated with the BLM.

3. CULTURAL RESOURCES PROTECTION STIPULATION

This lease may be found to contain previously unknown historic properties and/or resources protected under the National Historic Preservation Act (NHPA), American Indian Religious Freedom Act, Native American Graves Protection and Repatriation Act, E.O. 13007, or other statutes and executive orders. The BLM will not approve any ground disturbing activities that may affect any such properties or resources until it completes its obligations under applicable requirements of the NHPA and other authorities. The BLM may require modification to exploration or development proposals to protect such properties, or disapprove any activity that is likely to result in adverse effects that cannot be successfully avoided, minimized or mitigated.

4. CONTROLLED USE AND TIMING LIMITATION – ACEC

Long-billed Curlew Habitat Area of Critical Environmental Concern (ACEC)

The lease area contains high value habitat for the long-billed curlew (Long-billed Curlew Habitat Area of Critical Environmental Concern (ACEC)). Within the ACEC, motorized vehicle use will be limited to designated roads and trails. Rights-of-way construction activities for transmission lines, pipelines and other major projects will not be allowed during the nesting and brood-rearing periods from March 15 to June 30. Road construction will be limited and evaluated on a site-specific basis. All lands within the ACEC will be retained in Federal ownership. Preconstruction surveys and reports may be required to be submitted to BLM (Four Rivers Field Office). See Attachment 3 – Western Portion Long-billed Curlew Habitat Area of Critical Environmental Concern (ACEC) map.

5. CONTROLLED USE STIPULATIONS

CU-A. Endangered Species Plant – Slickspot peppergrass potential habitat

Prior to any surface disturbing activities, lands currently identified as potential slickspot peppergrass habitat or that are within the slickspot peppergrass management area will need a minimum of three years of field surveys to determine the presence/absence of slickspot peppergrass. All surveys must be conducted in years in which the spring precipitation is at or above a minimum of 60% of the long term average (normal). If slickspot peppergrass and/or its habitat are located, then consultation with the United States Fish and Wildlife Service (USFWS) will be required prior to the implementation of any surface disturbing activities. All surveys must be conducted by a qualified professional botanist familiar with slickspot peppergrass and its habitat. The project proponent may be required to fund these surveys. Proposed ground disturbing activities would likely require a Biological Assessment (Manual 6840, .1.F.5.a(2)) to be completed by the proponent or qualified consultant. Potential slickspot peppergrass habitat and the slickspot peppergrass management area are identified on Attachment 4 - Slickspot Peppergrass Management Area, Occupied, and Potential Habitat map.

CU-B. Erosion Hazard Soils

The lease area contains soils classified as erosion hazard. Protection of erosion hazard soils and soils on slopes greater than 30 percent is required. Soils will be managed to maintain productivity and to minimize erosion. Project level planning will consider the sensitivity of soil, water, and air resources in the affected area on a site-specific basis. Project level activity will require project design and land treatments designed to minimize adverse impacts to the soil, water, and air resources. Areas disturbed during project construction will be reseeded with a mixture of grasses, forbs, and shrubs when necessary. Lessee would also be required to adhere to a plan of development to effectively avoid and/or minimize impacts on soil resources by protecting the most sensitive areas, minimizing erosion, maintaining soil productivity, and minimizing surface disturbance from authorized activities.

Best management practices would be required on a site-by-site basis to protect erosive soils defined as severe or very severe erosion classes based on Natural Resources Conservation Service mapping or on slopes greater than 30 percent. The best management practices would include, but not be limited to, topsoil stockpiling, mulching, seeding with BLM approved seed and monitoring the seeding for successful germination and seedling establishment. See Attachment 5 – Erosion Hazard Soils map.

CU-C. Protection of Water Quality and Existing Wells

Lands adjacent to this lease contain existing water wells. As exploration and development activities commence, the lessee may be required to institute a hydrologic monitoring program commensurate with the level of activity to protect water quality and quantity.

The following stipulations would apply to the parcels as listed.

6. NO SURFACE OCCUPANCY - Endangered Species Plant PARCELS IDI-36166, IDI-36167, AND IDI-36168

The lease area contains element occurrences for slickspot peppergrass, a listed species under the Endangered Species Act of 1973 (as amended). No surface occupancy is allowed within slickspot peppergrass element occurrences 66, 68, 69, or 70 identified in Attachment 4 - Slickspot Peppergrass Management Area, Occupied and Potential Habitat. In the event that new element occurrences of slickspot peppergrass are identified during compliance with Stipulation 5 CU-A, then the new element occurrence and a 0.5 mile buffer around them could be subject to no surface occupancy pending consultation with the Service.

7. NO SURFACE OCCUPANCY – Isolated Wildlife Tract Enclosures PARCELS IDI-36165, IDI-36166, IDI-36168

The lease area contains isolated wildlife tract enclosures. No surface occupancy is allowed within the enclosures shown in Attachment 6 – Isolated Wildlife Tract Enclosures.

8. BUREAU OF RECLAMATION LANDS STIPULATION PARCELS IDI-36164, -36166, AND -36167

All lands covered by this lease within the area of any Government Reclamation project, or in proximity thereto, the lessee shall take such precautions as required by the Secretary of the Interior (Secretary) to prevent any injury to the lands susceptible to irrigation under such project or to the water supply thereof, PROVIDED, that drilling is prohibited on any constructed works or rights-of-way of the Bureau of Reclamation, and PROVIDED FURTHER, that there is reserved to the lessor, its successors and assigns, the superior and prior right at all times to construct, operate, and maintain dams, dikes, reservoirs, canals, wasteways, laterals, ditches, telephone and telegraph lines, electric transmission lines, roadways, appurtenant irrigation structures, and Reclamation works, in which construction, operation, and maintenance, the lessor, its successors and assigns, shall have the right to use any and all of the lands herein described without making compensation therefore, and shall not be responsible for any damage

from the presence of water thereon or on account of ordinary, extraordinary, unexpected, or unprecedented floods. That nothing shall be done under this lease to increase the cost of, or interfere in any manner with the construction, operation, and maintenance of such works. It is agreed by the lessee that, if the construction of any or all of said dams, dikes, reservoirs, canals, wasteways, laterals, ditches, telephone or telegraph lines, electrical transmission lines, roadways, appurtenant irrigation structures or Reclamation works across, over, or upon said land should be made more expensive by reason of the existence of the improvements and workings of the lessee thereon, said additional expense is to be estimated by the Secretary, whose estimate is to be final and binding upon the parties hereto, and that within thirty (30) days after demand is made upon the lessee for payment of any such sums, the lessee will make payment thereof to the United States, or its successors, constructing such dams, dikes, reservoirs, canals, wasteways, laterals, ditches, telephone and telegraph lines, electrical transmission lines, roadways, appurtenant irrigation structures, or Reclamation works, across, over, or upon said lands; PROVIDED, HOWEVER, that subject to advance written approval by the United States, the location and course of any improvements or works and appurtenances may be changed by the lessee; PROVIDED, FURTHER, that the reservations, agreements, and conditions contained in the within lease shall be and remain applicable notwithstanding any change in the location or course of said improvements or works of the lessee. The lessee further agrees that the United States, its officers, agents, and employees, and its successors and assigns shall not be held liable for any damage to the improvements or workings of the lessee resulting from the construction, operation, and maintenance of any of the works hereinafter enumerated. Nothing in this paragraph shall be construed as in any manner limiting other reservations in favor of the United States contained in this lease.

THE LESSEE FURTHER AGREES that there is reserved to the lessor, its successors and assigns, the prior right to use any of the lands herein leased, to construct, operate, and maintain dams, dikes, reservoirs, canals, wasteways, laterals, ditches, telephone and telegraph lines, electric transmission lines, roadways, or appurtenant irrigation structures, and also the right to remove construction material there from, without any payment made by the lessor or its successors for such right, with the agreement on the part of the lessee that if the construction of any or all of such dams, dikes, reservoirs, canals, wasteways, laterals, ditches, telephone and telegraph lines; electric transmission lines, roadways, or appurtenant irrigation structures across, over, or upon said lands or the removal of construction materials there from, would be made more expensive by reason of the existence of improvements or workings of the lessee thereon, such additional expense is to be estimated by the Secretary, whose estimate is to be final and binding upon the parties hereto, and that with thirty (30) days after demand is made upon the lessee for payment of any such sums, the lessee will make payment thereof to the United States or its successors constructing such dams, dikes, reservoirs, canals, wasteways, laterals, ditches, telephone and telegraph lines, electric transmission lines, roadways, or appurtenant irrigation structures across, over, or upon said lands or removing construction materials there from. The lessee further agrees that the lessor, its officers, agents, shall not be held liable for any damage to the improvements or workings of the lessee resulting from the construction, operation, and maintenance of any of the works herein above enumerated. Nothing contained in this paragraph shall be construed as in any manner limiting other reservations in favor of the lessor contained in this lease.

9. SPLIT ESTATE STIPULATION PARCELS IDI-36165 AND IDI-36168

On split estate lands (T. 6 N., R. 4 W., Sec. 7, Lots 1-3, E2W2, and T. 6 N., R. 5 W., Sec. 24, W2NWSW, Sec. 25 NW, Sec. 27 Lot 4) the lessee is responsible for making a good faith effort to reach access/use arrangements with the surface owner of such lands prior to entry upon the lands. Lessee must certify to the BLM that a good faith effort was made to reach a surface access/use agreement with the surface owner. If good faith efforts to obtain a surface access/use agreement fail, the lessee must submit a Damages Bond (minimum \$1,000; amount to be determined by BLM) to the BLM for the benefit of the surface owner to cover loss or damages to tangible improvements.

PROCESS FOR LEASE STIPULATION EXCEPTIONS, WAIVERS, AND MODIFICATIONS

To ensure leasing decisions remain appropriate in light of continually changing circumstances and new information, the BLM develops and applies lease stipulation exception, waiver, and modification criteria. The process for lease exceptions, waivers, and modifications is described in the Record of Decision and Resource Management Plan Amendments for Geothermal Leasing in the Western United States Programmatic Environmental Impact Statement (PEIS) (PEIS, pp. 2-14 and 15). An exception, waiver, or modification may not be approved unless, (1) the authorized officer determines that the factors leading to the stipulation's inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified; or (2) the proposed operations would not cause unacceptable impacts (43 CFR 3101.1-4).

- ☐ An exception is a one-time exemption for a particular site within the leasehold; exceptions are determined on a case-by-case basis; the stipulation continues to apply to all other sites within the leasehold. An exception is a limited type of waiver.
- ☐ A waiver is a permanent exemption from a lease stipulation. The stipulation no longer applies anywhere within the leasehold.
- ☐ A modification is a change to the provisions of a lease stipulation, either temporarily or for the term of the lease. Depending on the specific modification, the stipulation may or may not apply to all sites within the leasehold to which the restrictive criteria are applied.

An exception, waiver, or modification may be approved if the record shows that circumstances or relative resource values have changed or that the lessee can demonstrate that operations can be conducted without causing unacceptable impacts and that less restrictive requirements would meet resource management objectives. The authorized officer may require the operator to submit a written request for an exception, waiver, or modification and information demonstrating that (1) the factors leading to the inclusion of the stipulation in the lease have changed sufficiently to make the protection provided by the lease stipulation no longer justified or (2) that the proposed operation would not cause unacceptable impacts. Requests from the operator

should contain, at a minimum, a plan including related on-site or off-site mitigation efforts, to adequately protect affected resources; data collection and monitoring efforts; and timeframes for initiation and completion of construction, drilling, and completion operations. The operator's request may be included in a permit application (e.g., application for permit to drill), Notice of Staking, Sundry Notice, or letter. The BLM may also initiate the process. During the review process, coordination with other state or Federal agencies would be undertaken, as appropriate, and documented. For example, it may be appropriate to coordinate the review of wildlife exceptions, waivers, and modifications with the local office of the State wildlife agency. Staff review and recommendations would be documented along with any necessary mitigation and provided to the authorized officer for approval or disapproval. The applicant would then be provided with a written notification of the decision.

LEASE NOTICES

1. Best Management Practices (PEIS, 2-21)

In addition to lease stipulations, during any subsequent exploration, drilling, utilization, or reclamation and abandonment of geothermal resources, the BLM would require project-specific mitigation measures to permits (PEIS, Appendix D). The agency's first priority is to mitigate impacts on-site. When the agency determines that impacts cannot be mitigated to an acceptable level on-site, it may be necessary to deny the permit, ask the applicant to modify the proposal, or mitigate remaining impacts off-site. Best Management Practices are state-of-the-art mitigation measures and may be incorporated into the permit application by the lessee or may be included in the approved use authorization by the BLM as conditions of approval. Conditions of approval are not lease stipulations, but they are site-specific and enforceable requirements to minimize, mitigate, or prevent impacts to resource values from an intended operation. Conditions of approval can limit or amend the specific actions proposed by the operator.

2. Monitoring

Mitigation measures, including lease stipulations and conditions of approval as well as the general operation of geothermal developments, would be monitored by the lessee or the appropriate Federal agency to ensure their continued effectiveness through all phases of development. Using adaptive management strategies, where mitigation measures are determined to be ineffective at meeting the desired resource conditions, the BLM would take steps to determine the cause and require the operator to take corrective action. This information would also be used to inform future geothermal leasing and development.

3. Slickspot Peppergrass Critical Habitat – All Parcels

The 2011 Critical Habitat Designation is expected to be published by the U.S. Fish and Wildlife Service in the Federal Register during the first or second quarter of 2011. The designation would be expected to include some conservation measures or concerns for areas designated as critical habitat. The management guidelines in the 2009 Conservation Agreement (CA) and the 2003 Candidate Conservation Agreement (CCA) are not expected to change. It is expected that the CA and CCA management guidelines and the Controlled Use lease stipulation would apply to

designated critical habitat. No surface occupancy may be implemented on this lease to the extent necessary to avoid jeopardy, if occupancy would adversely modify critical habitat.

4. Material Site Right-of-Way IDI-10090 Parcel IDI-36166

This lease contains a Federal Material Site Right-of-Way issued to the Idaho Department of Transportation. The Material Site Right-of-Way contains two separate, irregularly shaped parcels (each approximately 1,100 by 660 feet) totaling 35.8 acres. One parcel is in T. 7 N., R. 4 W., Section 19 NWNE. The other parcel is in T. 7 N., R. 4 W., Section 28 NWNW. Any use of the surface requires coordination with the Idaho Department of Transportation. Mineral materials from the two sites are not available for nonfederal purposes.

5. Raptors – All Parcels

A. Raptor nest disturbance: Nest management guidelines are currently under revision by the U.S. Fish and Wildlife Service (Service). Pending finalization of these Service guidelines, protective buffers described in the February 2008 draft version of the Service “*Guidelines for Raptor Conservation in the Western United States*” (Whittington and Allen 2008) will be used on Idaho BLM-administered public lands unless more restrictive buffers are identified in existing RMPs or MFPs. While the draft Service guidelines provide recommended disturbance buffers for a comprehensive list of raptor species, several species of interest to Idaho BLM are summarized below for convenience.

Species	Spatial Buffer in Non-Urban Areas
Bald eagle ^a	0.5 to 1.0 mile
Northern goshawk	0.5 mile
Ferruginous hawk	1.0 mile
Golden eagle	0.5 mile
Peregrine falcon	1.0 mile
Red-tailed hawk	0.33 mile
Prairie falcon	0.5 mile
Swainson’s hawk	0.25 mile
Burrowing owl	0.25 mile

^a For winter roosts, a 0.25 to 1 mile buffer is recommended, depending on the degree of screening provided by vegetation or topographic features.

Seasonal restrictions for potentially disruptive construction or other human activities, will generally apply for raptors from February 1 through July 31 unless an exception is granted by the BLM authorized officer.

B. Golden eagle- additional considerations: During project planning, the BLM and project proponents should work closely with the Service in incorporating appropriate provisions and protocols found in *Interim Golden Eagle Technical Guidance: Inventory and Monitoring Protocols; and other Recommendations in Support of Golden Eagle Management and Permit Issuance* (Pagel et al. 2010) or more recent supplemental guidance.

6. Migratory Birds – All Parcels

Surface disturbing activities during the migratory bird nesting and brooding season (March 20 to July 15) may be restricted in order to avoid potential violation of the Migratory Bird Treaty Act. Appropriate inventories of migratory birds shall be conducted during analysis of actual site development. If active nests are located, the lessee shall coordinate with BLM to establish appropriate protection measures for the nesting sites which may include avoidance, restricting, or excluding development in certain areas to times when nests and nesting birds will not be disturbed. During development and production phases, if artificial ponds potentially detrimental to migratory birds are created these shall be fitted with exclusion devices such as netting or floating balls.